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No. 80

Supreme Court of the United States

OCTOBER TERM, 1946

JACK PARKER, ISIDOR M. SAKS, MELVIN CAPLAN, DAVID WERTH, C. CLARENCE KASKEL, MORTON H. BARON, ROBERT HERMANN, SAMUEL OGUS, CHARLES MASLOW, GEORGE WILLETT, HARRY WIENER, CHARLES GOLDMAN, DAVID RUDBERG, WILLIAM I. HOHAUSER and SYDNEY MAYBAUM,

Petitioners,

—against—

PAUL A. PORTER, Price Administrator.

PETITIONERS' BRIEF

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Petitioners,

—against—

PAUL A. PORTER, Price Administrator.

PETITIONERS' BRIEF

This appeal presents for review the right of tenants, under Section 203(a) of the Emergency Price Control Act of 1942, as amended, to administrative review of orders of the Price Administrator granting certificates of eviction to purchasers of proprietary leases in apartments which such tenants occupy, and the further right to judicial review under Section 204(a) of said Act. Certiorari was granted on May 13, 1946 (14 U. S. Law Week 3405).

Opinions Below.

The majority and dissenting opinions of the Emergency Court of Appeals are reported in 154 Fed. (2d) 830, and appear in the record herein (R. 63-82).

Jurisdiction.

The judgment of the Emergency Court of Appeals dismissing the complaint on procedural grounds was entered March 13, 1946 (R. 83). Jurisdiction of this Court is invoked under Section 204(d) of the Emergency Price Control Act of 1942, c. 26, 56 Stat. 23, 50 U. S. C. App. Sec. 92(d), as amended, making applicable Sec. 240 of the Judicial Code, as amended (28 U. S. C. 347).

Statement.[1]

Petitioners are tenants of certain apartments within the New York City Defense-Rental Area owned by the Fifty-Five Corporation which sought to convert twenty-eight of these apartments into cooperatives by offering for sale shares of stock in such owning corporation to certain purchasers, with proprietary leases for a term of years of the apartments involved. The purchase price for such apartments under the proposed ownership sharing plan aggregated approximately $390,000 over and above a first mortgage of $1,500,000 (R. 1, 2, 6).

While the cooperative was being organized, the managing agents of the owning corporation wrote the Chief Attorney for the New York City Defense-Rental Area, of the Office of Price Administration, on March 5, 1945, requesting an interpretation concerning the right of purchasers of such cooperative apartments in 55 Central Park West, to obtain certificates of eviction under the provisions of Subdivision (ii) of Section 6(b)(3)[2] of the Rent Regulations of the Office of Price Administration. This section provides that where a cooperative is organized on or after February 17, 1945, no certificate of eviction shall be issued, unless on

1.—Statement adopted from dissent of Judge McAllister of the Emergency Court of Appeals (R. 70-82).

2.—Added by Am. 17, 10 F. R. 1974, effective Feb. 17, 1945.

such date, stock in the cooperative had been purchased by persons who were then tenants of at least 80% of the apartments in the premises, or unless on such date the cooperative was in the the process of organization and the Administrator finds that substantial hardship would result from the failure to issue such a certificate.

The owners and brokers based their application for an interpretation on the latter portion of the section—that is, on the claim that substantial hardship would result to the owners of the capital stock of the corporation if they were not permitted to proceed with the conversion of some of the apartments into cooperatives under the regulations existing prior to February 17, 1945. Annexed to their letter requesting the interpretation of the right of purchasers of such cooperative apartments to obtain certificates of eviction were certain affidavits and exhibits. On March 23, 1945, an interpretation of hardship, in favor of the owning corporation, was granted by the Office of Price Administration—erroneously, and because of fraudulent misrepresentations, as contended by the tenants—and the representatives of the owning corporation were authorized to proceed with the share-ownership plan under the regulations in existence prior to February 17, 1945. Thereafter, the alleged purchasers of the apartments involved herein applied for certificates of eviction from the Price Administrator, based on a claimed compliance with Section 6(b)(2) of the Rent Regulation for Housing in the City of New York, in effect prior to February 17, 1945, which required that the purchasers of stock for the purpose of carrying out the cooperative ownership plan, must have paid 20% of the equity and the underlying obligation of the corporation, attributable to their apartments at the time of their stock purchase (R. 6, 7).

When the foregoing applications were made for certificates of eviction, the Office of Price Administration, in

accordance with its established practice, served copies of the petition together with notices on the appellants, advising them that they might submit any information they desired with reference to the matter and stating that failure to return the petition with their signed statements would result in the entry of an order upon the basis of the facts available to the Rent Director. Pursuant to this notice, the various tenants filed statements objecting to the granting of certificates of eviction; and the proceeding was thereafter referred to the Chief Branch Attorney of the New York City Defense-Rental Area, who on a hearing took approximately 1,000 pages of testimony. He subsequently recommended denial of the applications for certificates of eviction, giving as reasons that the purchasers did not fulfill the obligation of making payment of 20% of the equity and underlying obligation of the corporation attributable to their apartments, as required by the Housing Regulation; that the letter of interpretation as to hardship issued by the Administrator, and interposed in the proceedings, was based upon misrepresentations and fraudulent statements by the real estate brokers who were acting as managers and agents for the owning corporation; that the entire presentation of the share-ownership plan by the sponsors was permeated with the implication that it was a very substantial financial transaction involving important financial commitments on the part of the sponsors, whereas the actual fact was they had not a penny invested but were operating on an option, in the final exercise of which they hypothecated the very shares of stock which had been sold to purchasers, after payment therefor had been made, for a loan of $40,000 from a New York bank; and that this loan was for the purchase of enabling the sponsors to buy three apartments, none of which they intended to occupy, but for the sole purpose of showing a greater number of sales than were actually consummated (R. 9-15, 33, 34).

The findings and recommendations of the Chief Branch Attorney were sustained by the Area Rent Director of the City of New York, and were thereafter confirmed by the Acting Regional Administrator of the Office of Price Administration for Region II in an opinion in which he stated that the purchasers had not complied with the provisions of Section 6(b)(3) of the Rent Regulation of the Office of Price Administration which required that certificates relating to eviction should only be issued if 80% of the tenants in occupancy at the time of the issuance of the certificates became purchasers of their apartments. The Acting Regional Administrator further denied the claim that the purchasers were entitled to the certificates under the "hardship" provision under the above section, and sustained the findings of fraud and misrepresentation in the procurement of the letter of interpretation. The purchasers then filed a protest (R. 4) which was entertained and thereafter, the action of the Chief Branch Attorney, the Area Rent Director, and the Acting Regional Administrator, was reversed by order of the Price Administrator who granted certificates of eviction to the purchasers (R. 6-9, 34).

Upon entry of the order granting certificates of eviction, the tenants concerned filed a protest with the Administrator setting forth that the purchasers failed to comply with Section 6(b)(2) of the Rent Regulation, and in each individual case had paid in cash less than the proportionate share of the 20% of the stock purchase price required to be paid in good faith under that section; that the letter of interpretation was unjustified, uncalled for, unwarranted, and secured without a basis in fact or in law; that the facts and documents submitted by the managers of the owning corporation seeking the letter of interpretation as to hardship contained misrepresentations and constituted a fraud upon the Administrator; that the owning

corporation was not a cooperative corporation or association, and, therefore, did not come within the provisions of the laws and regulations of the Office of Price Administration as to the eviction of tenants of cooperative apartments; that the sponsors of the cooperative plan acted in bad faith throughout the proceedings; that the property owned by the corporation had no equity over and above its encumbrances; and that the plan for the sale of the shares of stock was fraudulent and infected with bad faith and misrepresentation (R. 9-15).

The foregoing protest was dismissed by the Price Administrator on November 2, 1945, on the ground the tenants had no standing to protest his order granting certificates of eviction, since Section 203(a) of the Emergency Price Control Act of 1942, as amended, provides that only persons "subject to" a regulation or order may file a protest thereto with the Administrator; that the Rent Regulations issued by the Administrator or his representatives prohibit or require action only by landlords; and that, therefore, only such persons, and not tenants, are "subject to" the regulations and orders within the meaning of the Act (R. 8).

The tenants thereupon filed a complaint in the United States Emergency Court of Appeals under Sec. 204(a) of the Emergency Price Control Act. The respondent moved to dismiss the complaint upon the ground that the petitioners were without standing to file it. On March 13, 1946, the Emergency Court of Appeals entered a judgment dismissing the complaint (R. 1-16, 19, 83). Three opinions were rendered:

The majority opinion held that the essential purpose of the Emergency Price Control Act was not to accord to tenants administrative and judicial review of the respondent's action in permitting their landlords to undertake

eviction proceedings against them, that the Act does not give tenants any right to remain in possession of defense area housing accommodations, which they might happen to occupy, and that, therefore, no rights of the tenants were affected by respondent's order authorizing eviction so as to give the tenants standing to protest under Sec. 203(a) of the Act, or to complain under Sec. 204(a) (R. 63-68).

Judge Magruder in concurring "with some hesitation", held that tenants had no standing to bring the regulations or orders of the respondent under judicial review, that the respondent acts in protection of the tenants' interests, that the tenants have no further legal interest in continued possession once a determination has been made by the respondent in favor of the landlord and that further delays under the act would result if the tenants were granted a right to protest respondent's orders, and that to allow tenants the right to file protest and complaint would subject the landlord to too many reviews of respondent's order (R. 68-70).

The dissent of Judge McAllister (R. 70-82) held that the tenants were "subject to" the orders of the respondent granting certificates to the landlord authorizing him to commence eviction proceedings, that one of the purposes of the Emergency Price Control Act is to give tenants a right to remain in possession of the defense-rental area housing accommodations which they might happen to occupy, that both the statement of purposes of the Act and the provisions thereof make it clear that one of the purposes of the Act is to protect the tenants against being forced out of their housing accommodations without good reason, that the Rent Regulation for Housing in the New York City Defense-Rental Area gives the tenants a right to continuing occupancy, that the tenants have a right to challenge any contingency which would deprive them of

possession, that the tenants had, pursuant to invitation from the Office of Price Administration, filed statements objecting to the granting of certificates of eviction on the original hearings and proceeded with such hearings to their conclusion and that the tenants are entitled to file a protest against the respondent's order and to contest the issues, as persons "subject to" the order within the intendment of Sec. 203(a) of the Act.

This Court granted certiorari on May 13, 1946.

Statutes and Regulations Involved.

The pertinent provisions of the Emergency Price Control Act of 1942, as amended, and of the Rent Regulation for Housing in the New York City Defense-Rental Area (8 Fed. Reg. 13914) promulgated by the Price Administrator appear herein.

Specification of Assigned Errors.

The questions which were presented in the petition for the writ of certiorari herein and which will be urged upon the argument of this appeal, are as follows:

1. Whether the fundamental purpose and intent of the defense housing provisions of the Emergency Price Control Act of 1942 and the Rent Regulation for Housing in the New York City Defense-Rental Area (8 Fed. Reg. 13914) is to protect tenants from eviction from defense-rental area housing accommodations, making such tenants "subject to" respondent's order authorizing their eviction, with standing to protest said order under Sec. 203(a) of the Emergency Price Control Act and to complain in the Emergency Court of Appeals under Sec. 204(a) of said Act, or whether the Act is solely regulatory of prices.

The majority of the Emergency Court of Appeals erred in holding that it was not the purpose of the Emergency Price Control Act to give tenants any right to remain in possession of such accommodations and that the tenants therefore are not subject to the Price Administrator's order authorizing their evictions.

2. Whether Sec. 203(a) of the Emergency Price Control Act authorizes the filing of a protest by the tenants with respondent to contest the propriety of an order issued by respondent which authorizes certain alleged purchasers of stock, who obtained proprietary leases of apartments, in defense-area housing accommodations, to pursue their remedy at local law to evict the tenants of such accommodations. The majority of the Emergency Court of Appeals erred in holding that the tenants have no right to protest the Price Administrator's order but that such order is not subject to administrative review.

3. Whether Sec. 204(a) of the Emergency Price Control Act authorizes the filing of a complaint by tenants with the Emergency Court of Appeals to review the action of the respondent in dismissing, on procedural grounds, their protest contesting the validity of respondent's order which authorizes the pursuit of local remedies to evict them. The majority of the Emergency Court of Appeals erred in holding that it had no jurisdiction to review the respondent's dismissal of the tenants' protest and that respondent's orders are not subject to judicial review.

4. Whether the denial to petitioners of a right to file a protest to the order of the respondent (pursuant to Sec. 203(a) of the Emergency Price Control Act), which permitted certain alleged purchasers of stock, who obtained proprietary leases of apartments in defense area housing

accommodations occupied by petitioners, to pursue their local remedy to evict the tenants, and whether the further denial to said tenants of the right to file a complaint in the Emergency Court of Appeals (pursuant to Sec. 204(a) of the Emergency Price Control Act), reviewing the denial of said protest, constitute a deprivation of property without due process of law under the Fifth Amendment. The majority of the Emergency Court of Appeals erred in interpreting the Act in such a way as to deny the tenants a right to the due process of administrative and judicial review.

5. Whether under Sec. 6(a) of the Rent Regulation for Housing in the New York City Defense-Rental Area, which provides that no tenant shall be removed from any housing accommodations so long as he pays rent unless certain contingencies arise, tenants have any legally recognizable rights which permit a judicial examination into the question of compliance by purchasers with the provisions of Sec. 6(b)(2) of said Regulation, as to requisite cash payments where the tenants assert that such Regulation has not been complied with and that the letter of interpretation as to hardship issued by the Administrator and interposed in the proceedings was based on fraud and misrepresentations of the agents of the owning corporation. The majority of the Emergency Court of Appeals erred in holding that the tenants did not have any standing to inquire into the validity and merits of the applications made to divest them from possession and to obtain a judicial examination of the order of the Price Administrator which reversed three of his subordinates and which authorized their evictions.

6. Whether the tenants having been invited by respondent to submit information on the original hearings on purchasers' application for certificates of eviction and

having answered and participated in the hearings before the local Office of Price Administration authorities to their conclusion had legal status to protest respondent's order which reversed the local and regional authorities. The majority of the Emergency Court of Appeals erred in holding that the tenants had no right to protest even though they had participated by invitation of the respondent in the original hearings.

Argument.

The tenants are "subject to" the Price Administrator's order authorizing their evictions and therefore have a right to protest such order under Sec. 203(a) of the Act and to file a complaint under Sec. 204(a) of the Act. There is no practical distinction between the Price Administrator's order authorizing the tenants' eviction and the actual eviction which flows from such order, since under Sec. 204(d) of the Act any defenses to the validity of the Price Administrator's order may not be asserted in the local Courts. The Price Administrator's order acts directly upon the tenants and is the effective cause of their removal. In every realistic sense, the tenants are "subject to" the Price Administrator's order.

The fundamental purpose of the Defense-housing provisions of the Act is to create a right in tenants to maintain possession of defense-area accommodations, as well as to control the price of such accommodations, since the "concern" of the Act with the cost of a dwelling necessarily implies an equal concern with the right to possess the dwelling. Sec. 2(d) of the Act, in defining the authority of the Price Administrator permits him to regulate "speculative or manipulative practices or renting or leasing practices (*including practices relating to recovery of the possession*) in connection with any defense area accommodations." (Italics supplied.)

Furthermore, the Rent Regulation for Housing in the New York City Defense-Rental Area promulgated by the Price Administrator indicates that the tenants have some legally recognizable right to remain in possession of housing unless certain contingencies arise. The Regulation provides that "no tenant shall be removed from any housing accommodations" so long as he continues to pay rent unless certain contingencies arise. The tenants are thus granted a vested right to remain in possession of defense-area housing, subject to defeasance by the occurrence of certain events. This Regulation evidences the existence of a property right in the tenants and implies that the tenants are entitled to the due process of a judicial examination into the circumstances which would act to defeat their occupancy as guaranteed by the Regulation—in this case, a judicial investigation into the facts constituting the alleged compliance by the owners of the cooperative apartments with the provisions of the Regulation. The tenants had been denied the right of administrative review by protest to the Price Administrator, and judicial review by complaint to the Emergency Court of Appeals. The landlords, however, were readily granted the right to protest (R. 4). The denial of a similar right to the tenants cannot be justified.

Unless a review is permitted of the respondent's order relating to eviction, the Price Administrator may act as the sole judge of his own actions, unchallenged and unchallenggable in any Court of law, even though he failed to recognize this cooperative scheme for what it was: a plan to capitalize on the acute housing shortage and to violate the expressed purpose of the Act to "prevent profiteering, hoarding, manipulation, speculation, and other disruptive practices resulting from abnormal market conditions or scarcity caused by or contributing to the national emergency."

Although the tenants participated in the original hearings on the purchasers' application for certificates of eviction, at the invitation of the Office of Price Administration, and testimony of approximately 1,000 pages was taken at the hearings, the Price Administrator later dismissed the tenants' protest on the ground that they were not parties "subject to" his order. Having been made parties initially, the tenants continued as parties, with standing to protest the ultimate adverse ruling made by the respondent reversing the findings of his subordinates.

Nor would the extension of the right to protest to tenants whose evictions are ordered unduly increase the burden of administering the Act. The Emergency Court of Appeals was established as a forum for judicial review of the Price Administrator's order and the effect of limiting the determination of the validity of respondent's order to this emergency tribunal implies that it will entertain a protest and complaint which seek to protect rights arising from the actual operation of the Act. Similar arguments of increased administrative burdens which have frequently been raised to prevent the expansion of the scope of protest have proved to be without foundation.

POINT I.

The tenants were "subject to" the respondent's order under the Emergency Price Control Act and the Regulation, with standing to file a protest under Sec. 203(a) of the Act for administrative review, and a complaint under Sec. 204(a) for judicial review, of respondent's order authorizing their eviction.

The tenants' protest was filed pursuant to Sec. 203(a) of the Emergency Price Control Act, which provides that:

> "At any time after the issuance of any regulation or order * * *, any person subject to any provision of such regulation, or order or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision * * *."

The complaint in the Emergency Court of Appeals was filed pursuant to Sec. 204(a) of the Act, which provides that:

> "any person who is aggrieved by the denial or partial denial of his protest may * * * file a complaint with the Emergency Court of Appeals * * * specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part."

Even under the strictest construction of the Act, the tenants are persons "subject to" respondent's order authorizing their eviction. Both the majority and minority opinions of the Emergency Court of Appeals in the instant case rejected the Administrator's contention that a person is subject to a regulation or order within the meaning of Sec. 203(a) only if the regulation or order prohibits or requires action by him. The right to file a protest against a regulation or order of the Price Administrator was held not to be restricted to those whose action was prohibited or required, since the Price Administrator himself, in Sec. 24 of the Revised Procedural Regulation No. 1, provided an exception to his interpretation that a person is "subject to" the provision of a maximum price regulation only if such provision prohibits or requires action by him. This exception was provided for the benefit of the producer of an agricultural commodity who may complain

that a particular price regulation violates Sec. 3 of the Emergency Price Control Act, or the Stabilization Act, which are designed to protect such producers against the depressing effect upon their prices, of the processor's ceiling, which exception is found in the following portions of the Revised Procedural Regulation (Revised Procedural Regulation No. 1, Sec. 1300.24; 7 Fed. Reg. 8961):

> "That a producer of an agricultural commodity shall be considered to be subject to a maximum price regulation for the purpose of asserting any right created by Sec. 3(c) of the Emergency Price Control Act of 1942 * * * for the benefit of producers of such an agricultural commodity. Any protest filed by a person not subject to the provision protested, or otherwise not in accordance with this Revised Procedural Regulation, may be dismissed by the Administrator."

This proviso clearly extends the concept of the phrase "subject to" and demonstrates a departure by the Administrator from a consistent and uniform construction that a person is not subject to, and, therefore, cannot protest, a regulation, unless, by the terms of such regulation, he is prohibited from taking, or required to take, some action.

Furthermore, the Emergency Court of Appeals in *Illinois Packing Co.* v. *Snyder*, 151 Fed. (2d) 337 (ECA 1945), held that a person who contended that he was arbitrarily and capriciously discriminated against in a regulation providing for the payment of subsidies, was a person "subject to" the regulation within the meaning of Sec. 203(a). In passing upon the issue thus tendered, the Emergency Court of Appeals said:

> "In *Buka Coal Co.* v. *Brown*, 133 F. (2d) 949 (E. C. A., 1943), we accepted the Price Administrator's inter-

pretation of this provision of the Act to the effect that a person is 'subject to' a provision of the maximum price regulation 'only if such provision prohibits or requires action by him.' While this interpretation may be appropriate, so far as concerns, the standing of a person to protest a price regulation, it is clearly not an appropriate criterion for determining the standing of a person to protest the kind of regulation now before us, a regulation setting up a scheme of compensatory subsidy payments under defined terms and conditions. If anybody could be 'subject to' a provision of the subsidy regulation, complainant certainly would meet this requirement, since it *claims to be excluded from the subsidy by a discriminatory and unlawful condition inserted in the subsidy regulation* by Amendment No. 2." (Italics supplied.)

Since in one case the Emergency Court of Appeals declared a person "subject to" a regulation because he had been excluded from its benefits by a discriminatory condition, and in another, the Administrator, pursuant to the broad discretion conferred upon him by the Statute, provided by regulation that a party was "subject to" the regulation, when otherwise he would have had no claim or standing to file a protest, it is apparent that the tenants likewise are "subject to" the Administrator's certificate authorizing their evictions.

This Court, in the recent OPA cases in which certiorari was granted, *Utah Junk Company* v. *Porter*, *Collins* v. *Porter*, *Thomas Paper Stock Company* v. *Porter* (14 U. S. Law Week 4305, 4306, 4307) liberalized the availability of protest proceedings under Section 203(a) of the Act. In *Utah Junk Company* v. *Porter* (14 U. S. Law Week 4305), this Court permitted protest against a superseded price schedule and construed Section 203(a) as amended

in favor of reviving a right to protest which had expired through non-user. The Court stated:

> "'Congress liberalized the right to challenge the validity of price regulation so extensively as it did, even reviving rights theretofore lapsed, because it felt, as we have seen, that rights were unfairly lost through unfamiliarity with the technical requirements of emergency legislation. Price-fixing is not static; it is a continuing process. The considerations of fairness that led Congress to give relief are the same whether a regulation was revised or remained unchanged. There is not a hint that Congress intended to draw a line so artificial as the one the Administrator would have us draw".

In response to the arguments advanced on behalf of the Administrator that he ought not to be burdened with issues arising under superseded regulations, this Court declared: "The Administrator has the duty of enforcing the Act * * * It is also suggested that protest proceedings under Section 203(a) as amended are not available to a protestant in petitioner's plight because the validity of the old schedule may be otherwise tested * * * It surely does not commend itself to good sense to bar a direct protest to the Administrator so easily justified by an unstrained reading of the Act, because leave might be obtained to litigate the issue in a roundabout way, involving violations of a presumptively valid regulation."

The tenants were "subject to" the Price Administrator's order, since there may be a distinction, but no pragmatic difference, between the authorization of the Price Administrator to evict tenants and the eviction proceedings themselves under local law, the necessary result of which are final orders directing the removal of tenants from

their homes. The equivalence of permission to evict and the subsequent eviction proceedings is underscored by the fact that the tenants had no defense which could be asserted to the summary proceedings at local law, for by Section 204(d) of the Act only the Emergency Court of Appeals has jurisdiction to consider the validity of an order of the Price Administrator. The issues of fraud in the procurement of the letter of interpretation of hardship (which formed the basis for the issuance of the certificates relating to eviction), of compliance by the purchaser with the prerequisites of Section 6(b)(2) of the Regulation as to cash payments, of the compliance of the cooperative ownership plan with the requirements of Sec. 85 of the New York Cooperative Corporation Law could not be decided in summary proceedings in the Municipal Court of the City of New York.

The New York courts have held that the order of the Price Administrator may not be attacked collaterally. In *New York City Housing Authority* v. *Rokaw*, 54 N. Y. Supp. (2d) 570, the Appellate Term of the New York Supreme Court held that a certificate authorizing a landlord to proceed under local law to evict a tenant is binding upon the state court.

The direct effect of the Price Administrator's order is that the tenants will be evicted. The intervening state court order that is obtainable as a matter of course following respondent's certificate, does not alter the result of respondent's order. The language of Section 1300.215 of Revised Procedural Regulation No. 3 providing that a *landlord* is "subject to a provision of a maximum rent regulation or of an order, only if such provision prohibits or requires action by him" is a limitation on the landlord, not the tenant.

The provisions of the Emergency Price Control Act, which are to be accorded a liberal construction to effectuate

their highly remedial purposes (*Automatic Fire Alarm Co.* v. *Bowles*, 143 Fed. (2d) 602 (ECA 1944) were given a broad interpretation in *Yakus* v. *United States*, 321 U. S. 414, where this Court, speaking through the late Chief Justice Stone, liberally construed the provisions of the Emergency Price Control Act for judicial review of the Administrator's orders as follows (at p. 433):

> "In addition, the present Act seeks further to avoid that confusion by restricting judicial review of the Administrator's determination to a single court. Such a procedure, so long as it affords *to those affected* a reasonable opportunity to be heard and present evidence does not offend against due process. *Bradley* v. *Richmond*, 227 U. S. 477; *First National Bank* v. *Weld County*, 264 U. S. 450; *Anniston Mfg. Co.* v. *Davis*, 301 U. S. 337." (Italics supplied.)

The use of the expression, "those affected", by the late Chief Justice shows clearly the intent of the Court to construe the judicial review provisions of the Emergency Price Control Act as all inclusive, rather than restricted to a particular class of persons. In defining the power of the Emergency Court of Appeals to review actions of the Administrator, Mr. Justice Stone continued (at p. 437):

> "The Emergency Court has power to review all questions of law including the question where the Administrator's determination is supported by evidence, and any question of the denial of due process for any procedural error appropriately raised in the course of the proceedings."

It therefore appears that although Congress was impelled by the pressure of the emergency situation to authorize summary action by the respondent in the first instance, this Court in construing this Act made it clear that the action of the Administrator would always be subject to later judicial review. (*Yakus* v. *United States*, (1943), 321 U. S. 414, 442.)

The legislative history of the Emergency Price Control Act of 1942, as amended, shows the clear intent of Congress to permit any one affected by an order of the Price Administrator to appeal therefrom to the Emergency Court of Appeals.

The Congressional Record (Vol. 88) defined this policy at page 663 as follows:

> "*Administration and Review*. Both the House bill and the Senate amendment vested the administration of the bill in a single Price Administrator * * * the Senate amendment provided (2) * * * direct judicial review of regulations and orders of the Administrator by an Emergency Court of Appeals composed of federal judges designated for service at such court by the Chief Justice of the United States."

The Record continues as follows, pages 663, 664:

> "The Senate amendment also provided that a statement of considerations must accompany every regulation or order establishing a maximum price, *that every such regulation or order should be subject to protest proceedings*, that if any protest should be denied the Administrator must advise the protestant of the grounds upon which such denial was based * * *." (Italics supplied.)

The Conference agreement adopted the provisions of the Senate amendment (p. 664).

Congressman Henry V. Steagall, speaking in behalf of the Conference Report stated at pages 664, 665:

> "Another provision that has been controversial throughout the entire consideration of the bill hinges on the question of the authority to be established for the administration of the law. The House bill provided for the Administration of the law by a single Administrator whose office was created by the bill. There was included in the House bill, as reported by the Committee on Banking and Currency, a provision establishing a special Appellate Court of not less than three circuit or district court judges, named by the Chief Justice of the United States, with the right to add additional members whenever required, the Court to be permitted to sit in divisions when necessary. *The provision also gave anybody dissatisfied with an order, ceiling or regulation of the Administrator the right to appear and protest the action of the Administrator.* The Administrator was required to take action on such protest within 30 days. Thirty days would be required in which an appeal might be made to the Emergency Court of Appeals established under the bill, with the duty of the Court to review the decision of the Administrator in establishing ceilings or other regulations under the bill.
>
> "The Conference Report follows substantially the bill reported by the House Committee on Banking and Currency. That is the plan embodied in the Conference Report." (Italics supplied.)

During the course of the debate in the House on the Conference Report, the following statement was made (at p. 687):

"* * * Under the provisions of the Conference report, when the Price Administrator after all this investigation which he makes fixes a price, *anyone who is aggrieved by reason of that decision has the right to enter a protest. He may file a protest and within 30 days he has a right to have a decision upon his protest. If that is denied, then he has the right to appeal to a court,* not an administrative board but an independent court set up and established under the provisions of the Conference report, the members of which court are appointed, if you please, by the Chief Justice of the United States Supreme Court. That court has the right and it is the duty to review the proceedings under which the price ceiling was fixed by the Administrator. If the Administrator does not follow the law which this Congress lays down, he is reversed and may I say that we are determining that policy. It is a legislative policy * * *. The Congress lays down the standards and establishes the procedure and tells and directs the Administrator what he shall do." (Italics supplied.)

A motion to recommit the Conference Report to the Committee of Conference was defeated (Volume 88 Congressional Record, p. 688) and the Conference Report was confirmed by the House (p. 688) and by the Senate (p. 725). No extensive discussion concerning the Administration and Review provisions of the Conference Report appeared in the report of the debate thereon in the Senate.

POINT II.

One of the fundamental purposes of the defense housing provisions of the Emergency Price Control Act and the regulation was to permit continued occupancy of defense housing accommodations of which tenants were in possession, and not merely to regulate the price of such accommodations. The tenants, therefore, were "aggrieved" by the dismissal of their protest, with standing to file a complaint under Sec. 204(a) of the Emergency Price Control Act, and were "subject to" respondent's order, with standing to file a protest under Sec. 203(a) thereof.

The basic issue with which the majority and minority of the Court below were concerned related to the fundamental purpose of the Emergency Price Control Act and the regulations promulgated pursuant thereto. The majority held that "an examination of the Emergency Price Control Act discloses that it was not one of its purposes to give to tenants any right to remain in possession of the defense-area housing accommodations which they might happen to occupy * * * its sole purpose * * * was to control the amount of rents of such accommodations and to prevent speculative, unwarranted and abnormal increases therein." (R. 66).

The minority specifically disagreed with this construction and stated: "Contrary to the conclusion entertained in the majority opinion, I am of the view that one of the purposes of the Emergency Price Control was to give to tenants a right to remain in possession of the defense-rental area housing accommodations which they might happen to occupy, except for good and sufficient reasons to the contrary * * * " (R. 77).

The consequence of the majority viewpoint is that tenants having no right to occupancy, are not parties "subject to" respondent's order authorizing their eviction. The result of the minority opinion constitutes the tenants as subject parties, since their right to continue in occupancy is affected by the respondent's order.

Both the wording of the Act and the Regulation show the clear intention of Congress to protect tenants, in the extremely critical housing shortage, in their right to continued occupancy of defense-housing. It is untenable to differentiate between the regulation of reasonable rental of defense housing accommodations and the right to continuing occupancy thereof. One is a function of the other, and Congress surely had in mind the continued possession of premises in defense housing areas as well as the payment of reasonable rental therefor.

In the Statement of Purposes of the Price Control Act (Sec. 1(a)), it is declared that "the purposes of this Act are to stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents; to eliminate and prevent profiteering, hoarding, manipulation, speculation, and other disruptive practices resulting from abnormal market conditions or scarcities caused by or contributing to the national emergency; * * * to protect persons with relatively fixed and limited incomes, consumers, wage earners, investors, and persons dependent on life insurance, annuities, and pensions, from undue impairment of their standard of living."

In Sec. 2(d) of the Act, it is provided:

> "Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit * * * speculative or manip-

ulative practices or renting or leasing practices (*including practices relating to recovery of the possession*) in connection with any defense-area housing accommodations, which in his judgment are equivalent to or likely to result in * * * rent increases * * * inconsistent with the purposes of this Act." (Italics supplied.)

By the foregoing section, the Administrator is empowered to issue regulations to effectuate the purposes of the Act, by prohibiting or regulating speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of possession) in connection with any defense-rental area housing accommodations, *which in his judgment are likely to result in rent increases,* inconsistent with the purposes of the Act.

The authority of the Administrator—*which is specifically referred to in the above section of the Act*—to regulate practices relating to the recovery of the possession, may be incident to his control over improper rent increases. But his power to issue regulations with regard to rents and tenancies is not restricted to preventing improper rent increases.

In Sec. 2(g), the Administrator is granted broad general powers to issue regulations to prevent the circumvention or evasion of the Act. Since the purpose of the Act, as stated therein, is to eliminate and prevent manipulation, speculation, and other disruptive practices resulting from abnormal market conditions or scarcities caused by or contributing to the national emergency, and to protect persons with relatively fixed and limited incomes from undue impairment of their standard of living, which circumvent or evade the Act, the issuance of any regulations for the purpose of protecting such persons from impairment of their standard of living, or to prevent such manipulations and disruptive practices, is authorized by the Statute and is within the intended ambit of its operation.

Whether the purpose of the Act is to restrict the right of a landlord to evict a tenant from his quarters—as well as to establish maximum rents that may be exacted—may be ascertained from an examination of the following provisions of the Statute: In Sec. 2(b) of the Act, it is provided that the Administrator may adopt regulations fixing the rent to be charged; and in Sec. 2(d), above quoted, the Administrator may restrict the owner's right to terminate the tenant's occupancy, if, in his judgment, it is likely to result in rent increases. In Sec. 2(g) of the Act, it is provided that regulations issued under the Act shall contain such provisions as the Administrator deems necessary to prevent the circumvention or evasion thereof, and Secs. 4(a) and 4(b) provide that it shall be unlawful to violate the regulation fixing rents or to remove or attempt to remove the tenant, or to refuse to renew the lease, because such tenant or occupant has taken, or proposes to take action as required by the Act or regulation or order or requirement thereunder.

From the foregoing, it would appear that one of the purposes of the Statute is to protect the tenants against being forced out of their housing accommodations, without good reason.

In *Snyder* v. *Reshink*, 131 Conn. 252, 38 A. (2d) 803 the Supreme Court of Errors of Connecticut, in discussing the purposes of the Emergency Price Control Act, observed:

> "The context of the statute in so far as applicable to rents leaves no doubt that a primary purpose is to protect the tenant in defense rental areas, not only against the exaction of excessive rents but also against being forced, without good and sufficient reason, by the owner to move out and seek quarters elsewhere. Looking to the accomplishment of these ends, the Act provides for the adoption by the Administrator of

regulations fixing the rent to be charged and also restricting the owner's right to terminate the tenant's occupancy."

POINT III.

The tenants, having been invited by the Office of Price Administration to submit information on the original hearing on the "purchaser's" applications for Certificates of Eviction, and having answered and participated in the hearing before the Chief Branch Attorney of the New York City Defense-Rental Area to its conclusion, had legal status to protest respondent's order which reversed the recommendations of the Chief Branch Attorney which was confirmed by the Rent Director and the Acting Regional Director. The tenants were persons "subject to" such order under Sec. 203(a) of the Emergency Price Control Act.

When the "purchasers" of stock in the owning corporation filed petitions for certificates of eviction, pursuant to Sec. 6(b) (2) of the Rent Regulation for Housing in the New York City Defense-Rental Area, authorizing them to proceed under the local law to evict the tenants from their apartments, the Office of Price Administration, in accordance with established practice, served copies of the petition, together with notices on all the tenants concerned, advising them that they might submit any information they desired with reference to the matter, and stating that failure to return the petition with their signed statements would result in the entry of an order upon the basis of the facts available to the Rent Director (R. 67, 70, 72). Pursuant to this notice, the tenants filed statements objecting to the granting of certificates of eviction. The proceeding was thereafter referred to the Chief Branch Attorney of the

New York City Defense Rental Area, who, on a hearing took approximately 1,000 pages of testimony. The tenants participated in the hearings as parties, they were requested to, and did, submit briefs in support of their position, their counsel cross-examined the landlords' witnesses and the tenants were considered parties in every way. The Chief Branch Attorney's recommendation that the application for certificates of eviction be denied was sustained by the Area Rent Director of the City of New York, and thereafter confirmed by the Acting Regional Administrator of the Office of Price Administration for Region II (R. 7, 8).

The invitation to the tenants to participate in the hearings was a practical construction of their rights by the Office of Price Administration, and constituted them parties "subject to" the Administrator's orders authorizing their eviction. The only method that the tenants had under the Act to review the Administrator's order, which reversed recommendations made as the result of a hearing in which petitioners were invited to, and did, participate, was to file a protest to the Administrator's order. Respondent could not invite the tenants to participate in hearings and then deprive them of any further right of administrative or judicial review once he had issued an adverse order.

The majority of the Court below held that the invitation by the Administrator to the tenants "was doubtless wise administrative procedure which enabled the Administrator to become fully informed with respect to all the facts which might have any bearing upon the questions raised by the petitions, but it did not, as the complainants urged, make the tenants parties to the proceedings * * *. No showing which any one of the tenants might have made with respect to his own situation and necessities could have had the slightest bearing upon the Administrator's

determination of the question raised by the landlord's petitions" (R. 67). However, the showing which the tenants made concerning the fraud and misrepresentation in procuring the original letter of interpretation and the failure to comply with the Regulation as to cash payments, had every bearing on the determination by the Chief Branch Attorney, and his superiors, on the validity of granting the "purchasers'" application. It was not the showing as to the tenants' "own situation and necessity", but the attack upon the validity of the application to oust them that was of importance. The tenants had and have a very real interest in the denial of the applications for certificates authorizing their eviction.

POINT IV.

Under Sec. 6(a) of the Rent Regulation for Housing in the New York City Defense-Rental Area, promulgated by respondent, tenants are given a vested right to remain in possession of Defense-Area Housing, subject to divestiture by eviction under Sec. 6(b)(2) of said regulation by a purchaser whose cash payments aggregate 20% or more of the purchase price. The tenants are entitled to a judicial examination into the purchasers' failure to comply with the conditions which may operate to divest them of their occupancy, and to protest respondent's order of eviction based on the assumption that such conditions were operative. To deny appellants such right is a deprivation of property without due process of law. The extension of such right would not impair the efficient administration of the Act.

Sec. 6(a) of the Rent Regulation for Housing in New York City Defense-Rental Area, promulgated by respondent, provides:

"*Removal of Tenant*—(a) *Restrictions on removal of tenant.* So long as the tenant continues to pay the rent to which the landlord is entitled, *no tenant shall be removed from any housing accommodations,* by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired or otherwise terminated, and regardless of any contract, lease agreement or obligation heretofore or hereafter entered into which provides for entry of judgment upon the tenant's confession for breach of the covenants thereof or which otherwise provides contrary thereto, *unless*:" (Italics supplied.)

(There follow certain conditions having to do with the tenant's refusal to renew the lease, refusal of access to the landlord, violation of obligation of tenancy or committing nuisance, demolition, or alteration by landlord in accordance with law, and occupancy by landlord under a right to buy or a right to possession acquired prior to November 1, 1943.)

Section 6(b)(2) of the Regulation provides, among other matter, the following:

"*Occupancy by purchaser. Removal or eviction of a tenant of the vendor,* for occupancy by a purchaser who has acquired his rights in the housing accommodations on or after November 1, 1943 *is inconsistent with the purposes of the Act and this regulation and would be likely to result in the circumvention or evasion thereof,* unless (i) the payment or payments of principal made by the purchaser, excluding any payments made from funds borrowed for the purpose of making

such principal payments, aggregate 20% or more of the purchase price, and (ii) a period of three months has elapsed after the issuance of a certificate by the Administrator as hereinafter provided. For the purpose of this paragraph (b) (2), the payments or principal may be made by the purchaser conditionally or in escrow to the end that they shall be returned to the purchaser in the event the Administrator denies a petition for a certificate. If the Administrator finds that the required payments of principal have been made, he shall, on petition of either the vendor or purchaser, issue a certificate authorizing the vendor or purchaser to pursue his remedies for removal or eviction of the tenant in accordance with the requirements of the local law at the expiration of three months after the date of issuance of such certificate." (Italics supplied.)

The Regulation clearly and unambiguously defines the nature of tenants' interest in and to the continued occupancy of the defense-housing accommodations of which they are in possession: This interest is a fully vested right to possession unless and until certain contingencies arise. Sec. 6(a) of the Regulation states that so long as rent is paid, "no tenant shall be removed from any housing accommodations by action to evict or to recover possession * * * *unless*" certain conditions exist which may act to divest him of possession. The tenants contend that it is the intention of the Act and the Regulation to give them the right to challenge these conditions which serve to divest and defeat their continuing occupancy granted by the Regulation, by filing a protest under Sec. 203(a) of the Emergency Price Control Act.

In order to deprive the tenants of their occupancy, a purchaser must comply strictly with the various provisions

of Sec. 6(b)(2) of the Regulation: The payments of principal made by the purchaser, excluding any payments made from funds borrowed for the purpose of making such principal payments, must aggregate 20% or more of the purchase price (assuming that the pre-February 17, 1945 Regulation applied) and the removal or eviction of a tenant must not be "inconsistent with the purposes of the Act and this Regulation" and must not be likely "to result in the circumvention or evasion thereof". The petitioners contend that the "purchasers" in each individual case paid in cash less than the proportionate share of the 20% of the stock purchase price required to be paid in good faith under the Regulation; that the so-called purchasers did not, in fact and in law, become owners of the apartments; that the representations upon which the initial certificate of hardship was based are fraudulent; that the whole plan by which the original owners procured the interpretation of hardship, upon which the rights of the so-called purchasers to the benefit of the pre-February 17, 1945 Regulation depend, was a sham; and that the proceedings in which the order was secured from the respondent by virtue of which it is sought to evict them are permeated with fraud and constituted a scheme to obtain a large sum of money as the result of the sale of the apartments in the property involved, in which there was no equity over and above the underlying encumbrances and that the very shares of stock of the owning corporation which were agreed to be sold to the "purchasers" were hypothecated as collateral security for a loan which was used by one of the owners of the stock of the owning corporation to acquire proprietary leases and that the entire course of the proceedings resulting in the order permitting the tenants' eviction "was and is unfair, unreasonable, arbitrary, inequitable and capricious and not in accordance with law." (R. 15).

Respondent having moved to dismiss the complaint, these allegations of the complaint must be deemed to be true. The tenants contend that they have a right to a judicial review of the propriety of the order which operated to divest them of their continued occupancy under Sec. 6(a) of the Regulation since they claim that such contingencies did not become validly operative, that an order based upon the supposition that they had become operative was improvidently issued and that they are entitled in defending their possession of the apartments, to challenge such order on the ground that it was procured by fraud and misrepresentation and results in a deprivation of their rights. This claim is not only supported by the underlying purpose of the Act and the Regulation, but is based on the repeatedly recognized constitutional right under the Fifth Amendment that no person shall be deprived of property without due process of law. Due process in the instant case surely should permit tenants, who are the objects of certificates of eviction, to be accorded a reasonable judicial review of their objections to the propriety of the grounds upon which such certificates are bottomed. The tenants have legal status as persons "subject to" an order permitting their eviction to file a protest to such order and, having been granted the right of continued occupancy by the Act and Regulation, subject to stated exceptions, to contest the validity and operability of such exceptions by which it is sought to deprive them of their rights of occupancy.

In *Bowles* v. *Willingham* (1945), 421 U. S. 503, this Court in passing on the constitutionality of the Emergency Price Control Act upheld the reasonableness of the procedure whereby no hearings were permitted to landlords before the effectuation of maximum rent orders. The Court, through Mr. Justice Douglas, at page 521, however, stated:

> "To require hearings for thousands of landlords before any rent control order could be made effective might

have diverted the program of price control * * *. But *Where Congress has provided for judicial review after the regulations or orders have been made effective, it has done all that due process under the War emergency requires.*" (Italics supplied.)

The denial by the majority of the Emergency Court of Appeals of any right in the tenants to question the Price Administrator's orders, in the face of contentions that such order was predicated on a letter of interpretation which was fraudulent and contrary to the express provisions of the Regulation pomulgated by the Administrator, results in depriving the tenants of property without due process of law.

To hold as the majority of the Court below did that the tenants have no more than a "regulatory", as distinct from a property, or statutory, right to possession (R. 67) is to contravene not only the express purpose of the Act and the Regulation but to repose in the Price Administrator an unbridled discretion insofar as the rights of the tenants are concerned, foreclosing the tenants from any right to appeal from the Administrator's actions. To accede to this contention would be to hold that the action of the Price Administrator, which was challenged—first in the protest to the Price Administrator and reiterated in the complaint in the Emergency Court of Appeals as "unfair, unreasonable, arbitrary, inequitable and capricious and not in accordance with the law" (R. 15)—is final and that the Price Administrator, without hearing, had the power to reverse the report and findings of the Chief Branch Attorney, the Area Rent Director and the Regional Administrator, without subjecting his own decision to judicial review by any court of law. Such holding would place the Price Administrator in the position of unchallengable

power to cause the eviction of tenants, capriciously, arbitrarily and inequitably (as is claimed in this case) at a time when an acute housing shortage prevails throughout the country, without permitting such persons sought to be dispossessed to appeal from such arbitrary exercise of authority.

It could never have been the intention of Congress to constitute the respondent the sole judge of his own actions.

The duty of the Price Administrator to enforce the Act included the duty to exercise his discretion so that the eviction of tenants would not be "inconsistent with the purposes of the Act and this Regulation and would be likely to result in the circumvention or evasion thereof" (Section 6(b)(2) Rent Regulation for Housing New York City Defense-Rental Area). Whether this Regulation gave tenants a vested property right or merely accorded a governmental privilege, the Price Administrator abused his discretion in failing to recognize this "cooperative" scheme for what it was and in failing to protect the tenants. The complaint alleges that this plan to evict the tenants was not a true cooperative, that although the owner swore "that said premises were worth not more than $1,000,000," (R. 6), the purchase price of these "cooperative apartments" aggregated about $390,000 over and above a first mortgage of $1,500,000. This attempt to sell apartments for a substantial profit without any underlying equity capitalizes on the acute housing shortage and violates the intention of Congress in passing the Act as expressed in the preamble: "To prevent profiteering, hoarding, manipulation, speculation and other disruptive practices resulting from abnormal market conditions or scarcity caused by or contributing to the national emergency".

In failing to recognize this cooperative scheme as evasive of the fundamental purpose of the Act, the Admin-

istrator failed to perform his duty to protect the tenants. The Price Administrator in this case entertained the protest of the *landlords* from a ruling made by three of his subordinates in favor of the tenants; he abused his discretion in dismissing the protest of the *tenants* from his ruling which reversed his three subordinates and found in favor of the landlords. Just as the Emergency Court of Appeals had jurisdiction to decide whether the Price Administrator went too far and abused his discretion in favor of a tenant, at the landlord's behest, so it has the correlative duty to consider whether the Administrator did not go far enough in protecting the tenants' interest. The Price Administrator either did not know, or chose to ignore, the fact that this cooperative venture takes advantage of the housing shortage and violates the spirit and letter of the Act.

Petitioners' contention that the interpretation of the Act made by the majority of the Emergency Court of Appeals denies them due process of law under the Fifth Amendment, is not based on any "particular form of procedure" which the tenants desire to follow. The tenants are willing to accept the form of procedure of protest and complaint defined by the Act. Their objection is that they have been given no remedy whatsoever to review the Price Administrator's determination and that if the Act is interpreted as precluding such right, such interpretation renders it *pro tanto* unconstitutional.

In the concurring opinion rendered in the Court below, it was said that the consequence of opening the door to judicial review would be to subject the landlord's right to recover possession to further delay during the pendency of protest proceedings instituted by the tenant followed by review proceedings in the Emergency Court of Appeals.

While the policy of administrative efficiency may be invoked to prevent judicial review of orders of the Price

Administrator which fix ceilings at too high a level, the same policy should not operate to strike down the right to judicial review *where possession is involved, particularly in this time of acute housing shortages.* Unless such right is accorded tenants, they are without remedy (Sec. 204(d) Act).

The identical argument of increased administrative burdens has been raised frequently to prevent the expansion of the scope of protests. The fears expressed by such enlargement have not been justified. On April 27, 1944, Chester Bowles, then Price Administrator, appeared before the Senate Committee on Banking and Currency and urged that the time to file protests should not be enlarged from the 60 days then permitted under Section 203(a). Mr. Bowles' statement is reminiscent of the present claim made by the respondent. He states (Hearings before the Senate Committee on Banking and Currency, 78th Cong. 2d Sess. on S. 1764, pages 1474, 1475):

> "There are very substantial reasons for suggesting that protests directed against the authority of a regulation as originally issued should be filed within 60 days of its issuance. It is of great importance from the point of view of industry as well as that of the Office of Price Administration that legal questions with regard to the basic authority of a regulation should be raised and settled as quickly as possible. * * *
>
> "The abolition of all time limitations upon the filing of protests would also create *serious administrative difficulties and would greatly handicap the enforcement of price and rent regulations.* If a protest could be filed at any time, irrespective of changed circumstances, the natural tendency of most violators of regulations would be to file a protest as soon as

enforcement proceedings were brought against them. This step would frequently be taken merely for the purpose of delaying enforcement proceedings even though there were no substantial basis for the protest. The result would be not only that the enforcement would be greatly handicapped but also that the administrator would be confronted with frivolous protests which would absorb time and energies that could ill be spared from the consideration of protests filed in good faith without reference to enforcement proceedings. As indicated more fully below, the inevitable effect would be to delay the disposition of bona fide protests * * *." (Italics supplied.)

Nevertheless, Section 203(a) was amended to permit protests to be filed "at any time." It does not appear that the Price Administrator's burdens were thereby unduly increased.

If a choice must be made between the "delay" of a court review of an eviction order, which is attacked as arbitrary and capricious, and the rights of the tenants to a full and fair hearing of their complaints, the choice should be exercised in favor of judicial review. Otherwise, under the guise of the argument of "delay", administrative injustice would be sanctioned. Any legal proceeding can be characterized as delay or "red tape", as the concurring opinion has it (R. 69). Legal proceedings rather should be regarded as safeguards to rights, which are not lightly to be denied. The persistent attempt in this case of the Price Administrator to shield his order of eviction from further administrative and judicial scrutiny, made after the Chief Branch Attorney, the Rent Director and the Acting Regional Director had found misrepresentations and failure of compliance with existing regulations, underscores the necessity for permitting tenants to protest under Sec. 203(a), and to review any denial of such protest under Sec. 204(a) of the Act.

To hold that the tenants have a right to protest after they have participated in hearings which resulted in an ultimate order against them, would not jeopardize the effective administration of the Act nor result in the assumption of a new administrative burden of great magnitude, because by the time the protest was filed by the tenants, the hearings had been held and over 1,000 pages of testimony had been taken. What remained when the tenants filed their protest with the respondent was for him to determine the issues raised by the protest *on the merits* and to rule as a matter of substantive right whether the alleged landlords had brought themselves within the terms of the superseded Regulation, and if so, whether they complied with its terms. Instead, the respondent sought refuge in dismissing the tenants' protests as a matter of procedure. This action has effectively blocked any judicial review of his actions by the tenants as parties aggrieved. Having reversed his subordinates' findings and rendered an opinion, the Price Administrator cannot contend that the effective administration of the Act would be jeopardized if he entertained the tenants' protest, denied it on the merits, and allowed them to review his determination in the Emergency Court of Appeals.

CONCLUSION.

The judgment of the United States Emergency Court of Appeals should be reversed and the respondent directed to determine the tenants' protest on the merits.

Respectfully submitted,

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